

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MIGUEL LOMELI AGUILA

Plaintiff,

v.

THE UNITED STATES OF AMERICA,
THE UNITED STATES DRUG
ENFORCEMENT AGENCY, UNKNOWN
NAMED DRUG ENFORCEMENT AGENCY
AGENTS 1-10, UNKNOWN NAMED
SUPERVISING DRUG ENFORCEMENT
AGENCY AGENTS 11-20,

Defendants.

1:08-cv-01149 OWW SMS

ORDER GRANTING PLAINTIFF'S
MOTION TO TRANSFER (DOC. 8)

I. INTRODUCTION.

Plaintiff Miguel Lomeli Aguila ("Aguila") brings this action alleging wrongful arrest and detention by the United States Drug Enforcement Agency and its agents, asserting claims for: 1) assault, battery, false arrest and imprisonment, and intentional infliction of emotional distress under the Federal Tort Claims Act, 2) for violation of his Fourth and Fifth Amendment rights under 42 U.S.C. § 1983, and 3) for *Bivens* civil rights

1 violations.

2 Before the court for decision is Plaintiff's motion to
3 transfer this action pursuant to 28 U.S.C. § 1406(a), or in the
4 alternative, pursuant to 28 U.S.C. § 1404(a), to the Central
5 District of California. Plaintiff moves to transfer on the
6 ground of improper venue, explaining that his counsel
7 inadvertently filed the case in the Eastern District of
8 California and all witnesses and evidence related to the case are
9 located in or near Orange County, California.

10 II. FACTUAL AND PROCEDURAL BACKGROUND.

11 On July 30, 2006, Plaintiff was taken into custody by the
12 Santa Ana Police Department in Santa Ana, California. The
13 following day, agents of the United States Drug Enforcement
14 Agency ("DEA") obtained a court order to take Plaintiff into
15 federal custody and he was taken to federal prison in Los
16 Angeles, California. The United States Attorney for the Central
17 District of California brought charges of conspiracy to possess
18 with intent to distribute a controlled substance against
19 Plaintiff and he was detained pursuant to the charges. On August
20 7, 2006, Plaintiff was arraigned and pled not guilty to all
21 counts. On January 5, 2007, upon motion of the U.S. Attorney for
22 the Central District of California, the court dismissed the case
23 with prejudice.

24 Plaintiff filed his complaint on August 7, 2008. (Doc. 1.)
25 Plaintiff filed this motion to transfer on October 9, 2008.
26 (Doc. 8.) Defendant United States of America filed its statement
27 of non-opposition on December 1, 2008. (Doc. 10.)
28

1 III. DISCUSSION.

2 28 U.S.C. § 1406(a) provides that "[t]he district court of a
3 district in which is filed a case laying venue in the wrong
4 division or district shall dismiss, or if it be in the interest
5 of justice, transfer such case to any district or division in
6 which it could have been brought." See also *King v. Russell*, 963
7 F.2d 1301 (9th Cir. 1992). The proper venue for actions against
8 an officer or employee of the United States is prescribed by 28
9 U.S.C. § 1391(e):

10 A civil action in which a defendant is an officer or
11 employee of the United States or any agency thereof
12 acting in his official capacity or under color of legal
13 authority, or an agency of the United States, or the
14 United States, may, except as otherwise provided by
15 law, be brought in any judicial district in which 1) a
16 defendant in the action resides, 2) a substantial part
17 of the events or omissions giving rise to the claim
18 occurred, or a substantial part of property that is the
19 subject of the action is situated, or 3) the plaintiff
20 resides if no real property is involved in the action.

21 Here it is undisputed that all of the "events or omissions
22 giving rise to the claim" occurred in Orange and Los Angeles
23 counties, which are both located within the Central District of
24 California, and that no events or omissions related to this case
25 occurred in the Eastern District of California. Plaintiff was
26 arrested in Santa Ana, California, detained in Los Angeles, and
27 charged by the U.S. Attorney for the Central District of
28 California. Plaintiff admits that he made an inadvertent mistake
when he stated in his complaint that venue was proper in the
Eastern District because "all injuries complained of herein were
caused and suffered in the County of Kern...." (Doc. 1,
Complaint at 2.) Plaintiff's counsel explains that when he filed

1 Plaintiff's complaint, he mistakenly used an old template of a
2 complaint from an earlier case arising from Kern County. (Doc. 8
3 at 5.) In addition, Plaintiff asserts that no Defendant or
4 Plaintiff involved in this case resides within the Eastern
5 District of California and most, if not all, of the Defendants
6 reside in the Central District of California. Since none of the
7 venue requirements of 28 U.S.C. § 1391(e) are met, venue is
8 improper in the Eastern District of California.

9
10 IV. CONCLUSION.

11 Because the Defendants reside there and the arrest and
12 incarceration of Plaintiff occurred there, venue is proper in the
13 United States District Court, Central District of California.
14 Defendants do not oppose the motion. Accordingly, the § 1406(a)
15 motion to transfer is GRANTED. The clerk is ORDERED to transfer
16 this case to the Southern Division of the Central District of
17 California.

18
19 IT IS SO ORDERED.

20 Dated: December 23, 2008

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE